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KHALID MAT

v.

SURUHANJAYA PASUKAN POLIS DIRAJA MALAYSIA
& ORS

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HIGH COURT MALAYA, KUALA LUMPUR
AZIAH ALI J

[APPLICATION FOR JUDICIAL REVIEW NO: R1-25-186-2009]
11 JANUARY 2011

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ADMINISTRATIVE LAW: *Judicial review - Certiorari - Dismissal for misconduct - Application to quash 1st respondent's decision - Whether action taken under wrong legislation - Letter of notification of disciplinary punishment - Whether defective - Whether it was signed by member of 1st respondent - Applicant's request for statements recorded by witness to make his representation - Whether 1st respondent under obligation to comply with request - Whether absence of oral hearing meant denial of natural justice - Public Officers (Conduct and Discipline) (Amendment) Regulations 2002 - Public Officers (Conduct and Discipline) Regulations 1993*

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PUBLIC SERVANTS: *Disciplinary action - Procedure - Dismissal for misconduct - Whether disciplinary action taken under wrong legislation - Letter of notification of disciplinary punishment - Whether defective - Whether it was signed by member of 1st respondent - Applicant's request for statements recorded by witness to make his representation - Whether 1st respondent under obligation to comply with request - Whether absence of oral hearing meant denial of natural justice - Public Officers (Conduct and Discipline) (Amendment) Regulations 2002 - Public Officers (Conduct and Discipline) Regulations 1993*

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PUBLIC SERVANTS: *Dismissal - Dismissal of police officer - Disciplinary proceedings - Whether oral hearing should have been given - Whether right to be heard denied - Statement of witnesses not supplied - Whether 1st respondent under obligation to comply with request - Public Officers (Conduct and Discipline) (Amendment) Regulations 2002 - Public Officers (Conduct and Discipline) Regulations 1993*

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The applicant made this application for judicial review for an order of *certiorari* to quash the decision of the 1st respondent *ie*, the Suruhanjaya Pasukan Polis Diraja Malaysia. The applicant, a chief inspector of the Royal Malaysian Police, was dismissed from the force by the 1st respondent for misconduct under the Public

Officers (Conduct and Discipline) (Amendment) Regulations 2002 (‘the 2002 Regulations’). The applicant submitted *inter alia* the following: (i) the 1st respondent had acted mechanically and had taken disciplinary action under the wrong legislation thereby causing confusion. This was because the show cause letter and the letter of notification of disciplinary punishment (‘the letter’) issued to the applicant referred to the 2002 Regulations but the affidavit filed for the 1st respondent, referred to Public Officers (Conduct and Discipline) Regulations 1993 (‘the 1993 Regulations’); (ii) the letter issued was defective as it did not state the effective date of the punishments imposed and there was no evidence that the person who signed it was a member of the 1st respondent; (iii) he was not able to put out an adequate representation because the 1st respondent did not supply him with the documents he had requested; and (iv) his request for an oral hearing was refused and therefore there was a denial of natural justice.

Held (dismissing the application):

- (1) The 2002 Regulations was an amending law to amend the existing legislation. By virtue of s. 90 Interpretation Acts 1948 and 1967, the new provisions introduced *vide* the 2002 Regulations formed part of and was to be construed as one with the 1993 Regulations. The 1993 Regulations was still in force and remained as the only regulations governing the conduct and the discipline of public servant, until such time it is repealed. Therefore, the applicant’s submission that there was confusion on which Regulations applied in the present case was devoid of merit. (para 8)
- (2) The omission in stating the effective date of the punishment did not render the letter invalid. The punishment takes effect immediately upon the decision being made. (para 9)
- (3) The signatory on the letter was one Dato’ Raja Azahar who was the secretary of the 1st respondent. The further top left hand corner of the letter had the words ‘Setiausaha Suruhanjaya Pasukan Polis’ indicating that the letter was issued by the secretary of the 1st respondent. This was sufficient evidence that the letter was signed by the secretary of the 1st respondent who was duly authorized by the 1st respondent to convey its decision. (para 12)

- A (4) The applicant had requested to be supplied with the statements recorded by the witness; however the 1st respondent was not under any obligation or compulsion to comply with the applicant's request. It was sufficient that the applicant was allowed to look at the documents to enable him to appraise himself on the matters alleged against him. (para 16)
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- C (5) The right to be heard did not entail an obligation to hold an inquiry. The applicant had availed himself of the opportunity to be heard which was reflected in his lengthy representations. The 1993 Regulations were in accord with the principles of natural justice and procedural fairness. In the context of the 1993 Regulations, the absence of oral hearing did not mean a denial of natural justice. (paras 18-20)
- D **Case(s) referred to:**
Abdul Aziz Mohd Alias v. Timbalan Ketua Polis Negara, Malaysia & Anor [2010] 3 CLJ 643 FC (**refd**)
Annathurai Marimuthu v. Pengerusi Lembaga Tatatertib Polis DiRaja Malaysia, Bukit Aman & Ors (Application For Judicial Review No: R1-25-326-2008 (Unreported) (**refd**)
- E *Bryne v. Kinematograph Renters Society Ltd* [1958] 2 All ER 579 (**refd**)
Ceylon University v. Fernando [1960] 1 WLR 223 (**refd**)
Chai Kok Choi v. Ketua Polis Negara & Ors [2008] 1 CLJ 113 FC (**refd**)
Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 CLJ 333 SC (**refd**)
- F *Goh Ching Huat v. Ketua Polis Negara & Anor* [2008] 1 CLJ 27 CA (**refd**)
Leeson v. General Council of Medical Education and Registration [1889] 43 Ch D 366 (**refd**)
Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal [2001] 2 CLJ 525 FC (**refd**)
- G *Mat Ghaffar Baba v. Ketua Polis Negara & Anor* [2008] 1 CLJ 773 CA (**refd**)
Najar Singh v. Government of Malaysia & Anor [1976] 1 LNS 81 PC (**refd**)
Raja Abdul Malek Muzaffar Shah Raja Shahrulzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619 CA (**dist**)
- H **Legislation referred to:**
Police Act 1967, s. 78(1)
Public Officers (Conduct and Discipline) (Amendment) Regulations 2002, reg. 37
- I Rules of the High Court 1980, O. 53

For the applicant - G Subramaniam Nair; M/s Maniam Nair & Co
For the respondents - Shamsul Bol Hassan (Nadia Tajuddin with him SFC);
AG's Chambers

Reported by Melinda Robert

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JUDGMENT

Aziah Ali J:

[1] The applicant was a Chief Inspector of the Royal Malaysian Police. At the material time he was attached to the Jabatan Jenayah Narkotik, Bukit Aman, Kuala Lumpur. The 1st respondent instituted disciplinary action against the applicant on three charges of misconduct under Peraturan-Peraturan Pegawai Awam (Kelakuan Dan Tatatertib) 1993 (Pindaan) 2002 (“the 2002 Regulations”). The applicant was found guilty of all the charges. The applicant was imposed with the punishment of dismissal in respect of the first charge, and warning (amaran) in respect of the second and third charges.

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[2] By way of this application the applicant applies for judicial review under O. 53 of the Rules of the High Court 1980 for an order of *certiorari* to quash the decision of the 1st respondent imposing the punishment of dismissal in respect of the 1st charge levelled against him. I dismissed the application with costs of RM2,500 to the 3rd respondent.

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Background

[3] By letter dated 2 May 2006 issued by the 2nd respondent, the applicant was interdicted under s. 78(1) of the Police Act 1967 pending investigations into his conduct (exh. KM1). By letter dated 18 September 2007 issued by the 1st respondent the applicant was informed that arising out of a report relating to his conduct and investigations carried out, the chairman of the 1st respondent found that there is a *prima facie* against him and was of the opinion that disciplinary action with a view to dismissal or demotion under reg. 37 of the 2002 Regulations ought to be taken against him on three charges which read as follows (exh. KM2):

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A Pertuduhan Pertama

Bahawa anda sebagai Pegawai Awam iaitu Ketua Inspektor (1/14505) Khalid bin Mat dalam Pasukan Polis Diraja Malaysia ketika itu bertugas sebagai Inspektor Risik Jabatan Jenayah Narkotik, Bukit Aman, Kuala Lumpur telah didapati tidak jujur kerana di antara tempoh 25 Jun 2005 lebih kurang jam 2030 hrs hingga 26 Jun 2005 lebih kurang jam 0300 hrs didapati telah bersubahat dengan Kadet Penolong Penguasa Polis (G/15421) Azli bin Kamaludin dan Ketua Inspektor (I/13076) Owi Cheng Ian iaitu cuba mendapatkan wang sogokan berjumlah RM1,000 setiap seorang bagi membebaskan lima (5) orang suspek iaitu Muhamad Yusairi bin Che Omar KP: 790103- 03-5513, Nik Azma binti Nik Hasan KP: 780122-03-6256, Ab Rahman bin Ismail KP: 780101-03-8287, Ahmad Rushdy bin Mohd. Nawi KP: 791209-14-5651 dan Azlina binti Wan Ismail KP: 820202-03-5396 daripada tindakan undang-undang dimana mereka ini telah ditahan kerana disyaki terlibat dengan aktiviti penyalahgunaan ubat batuk disekitar kawasan Bandar Sri Damansara, Kota Damansara dan Damansara Damai, Petaling Jaya, Selangor. Oleh hal yang demikian perbuatan anda itu telah melanggar tatakelakuan di bawah Peraturan 4(2)(f), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 (pindaan) 2002 seperti berikut:

4(2) Seseorang pegawai tidak boleh:

(f) tidak jujur atau tidak amanah.

F Jika anda didapati bersalah keatas pertuduhan pertama, anda boleh dihukum mengikut Peraturan 38, Peraturan-Peraturan Pegawai Awam (Kelakuan Dan Tatatertib) 1993 (pindaan) 2002.

Pertuduhan Kedua

G Bahawa anda sebagai Pegawai Awam iaitu Ketua Inspektor (1/14505) Khalid bin Mat dalam Pasukan Polis Diraja Malaysia ketika itu bertugas sebagai Inspektor Risik Jabatan Jenayah Narkotik, Bukit Aman, Kuala Lumpur telah didapati tidak jujur kerana pada 26 Jun 2005 lebih kurang jam 0350 hrs dan pada 14 Disember 2005 lebih kurang jam 1445 hrs telah bercakap bohong di dalam rakaman percakapan yang diberikan oleh anda kepada pihak Urus Setia KPN (Tatatertib) kerana anda telah menafikan bahawa kumpulan serbuan yang terlibat ke atas pemeriksaan dan tangkapan di tiga premis disekitar kawasan Bandar Sri Damansara, Kota Damansara dan Damansara Damai, Petaling Jaya, Selangor di antara tempoh 25 Jun 2005 jam 2030 hrs hingga 26 Jun 2005 lebih kurang jam 0300 hrs sebenarnya

adalah seramai empat (4) orang tetapi sebaliknya anda mendedahkan hanya tiga (3) orang sahaja. Oleh hal yang demikian perbuatan anda itu telah melanggar tatakelakuan di bawah Peraturan 4(2)(f), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 (pindaan) 2002 seperti berikut:

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4(2) Seseorang pegawai tidak boleh:

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(f) tidak jujur atau tidak amanah.

Jika anda didapati bersalah keatas pertuduhan kedua, anda boleh dihukum mengikut Peraturan 38, Peraturan-Peraturan Pegawai Awam (Kelakuan Dan Tatatertib) 1993 (pindaan) 2002.

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Pertuduhan Ketiga

Bahawa anda sebagai Pegawai Awam iaitu Ketua Inspektor (1/14505) Khalid bin Mat dalam Pasukan Polis Diraja Malaysia ketika itu bertugas sebagai Inspektor Risik Jabatan Jenayah Narkotik, Bukit Aman, Kuala Lumpur pada 25 Jun 2005 lebih kurang jam 1930 hrs hingga 26 Jun 2005 lebih kurang jam 0300 hrs telah didapati ingkar perintah kerana dengan sengaja anda tidak mematuhi kehendak arahan CAD Officers Hand Book No.12 yang menghendaki sesuatu maklumat berkaitan aktiviti-aktiviti penyalahgunaan dadah di rekodkan dalam bentuk laporan untuk dimajukan kepada pihak atasan tetapi anda sebaliknya telah bertindak secara sendirian ke atas maklumat penyalahgunaan ubat batuk disekitar kawasan Bandar Sri Damansara, Kota Damansara dan Damansara Damai, Petaling Jaya, Selangor. Oleh hal yang demikian perbuatan anda itu telah melanggar tatakelakuan di bawah Peraturan 4(2)(i), Peraturan- Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 (pindaan) 2002 seperti berikut:

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4(2) Seseorang pegawai tidak boleh:

(i) ingkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsirkan dengan munasabah sebagai ingkar perintah.

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Jika anda didapati bersalah keatas pertuduhan kedua, anda boleh dihukum mengikut Peraturan 38, Peraturan-Peraturan Pegawai Awam (Kelakuan Dan Tatatertib) 1993 (pindaan) 2002.

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[4] The applicant avers that by three letters dated 31 October 2007, 31 December 2007 and 4 January 2008 to the 1st respondent, he requested for extension of time to put up his representations and to be supplied with all documents related to

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A the investigation of his disciplinary matter including statements recorded from witnesses. He said he received no reply. Therefore he said he had to put up his representations without adequate documents. By letter dated 22 January 2008 the applicant made his representations (exh. KM6).

B [5] The applicant contends that he was unable to put up an effective representation due to the failure of the 1st respondent to supply him with the documents requested. Subsequent to his written representations the applicant wrote a letter dated
C 15 December 2008 repeating his request for statements recorded from witnesses. By letter dated 10 March 2009 the applicant was informed that his request for an oral hearing was refused.

D [6] On 6 May 2009 the applicant received a letter dated 19.3.2009 signed by one Dato' Raja Azahar bin Raja Abdul Manap informing him of the decision of the 1st respondent (exh. KM9) which reads as follows:

Pemberitahuan Hukuman Tatatertib

E Dengan hormatnya saya memaklumkan bahawa Suruhanjaya Pasukan Polis di dalam mesyuaratnya yang ke-74 pada 11.03.2009 selepas menimbang surat representasi tuan bertarikh 22.1.2008 dengan teliti dan saksama telah membuat keputusan seperti berikut:

F (a) Tuan didapati bersalah dan dikenakan hukuman Buang Kerja mengikut Peraturan 38(g), Peraturan- Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 (pindaan) 2002 bagi pertuduhan pertama.

G (b) Tuan didapati bersalah dan dikenakan Amaran mengikut Peraturan 38(a), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 (pindaan) 2002 bagi pertuduhan kedua.

H (c) Tuan didapati bersalah dan dikenakan hukuman Amaran mengikut Peraturan 38(a), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 (pindaan) 2002 bagi pertuduhan ketiga.

I 2. Sila akui penerimaan surat ini dengan menandatangani surat akuan terima yang disertakan dan dikembalikan.

[7] Counsel for the applicant raised the following grounds:

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The 1st Respondent Had Acted Mechanically And Had Taken Disciplinary Action Under The Wrong Legislation Thereby Causing Confusion

[8] Counsel refers to the show cause letter dated 18 December 2007 (exh. KM2) and the letter of notification of disciplinary punishment dated 19 March 2009 (exh. KM9) both of which refer to the 2002 Regulations. However the affidavit filed for the 1st respondent (encl. 10) refers to the Peraturan-Peraturan Pegawai Awam (Tatakelakuan dan Tata tertib) 1993 ("the 1993 Regulations"). It is submitted for the applicant that the disciplinary action taken under the 2002 Regulations is defective as the 1st Respondent has failed to apply its mind to the correct legislation applicable. Counsel submits that there is uncertainty or confusion under which Regulations the disciplinary action was taken against the applicant. For the respondents learned Senior Federal Counsel submits that there is no confusion as to the particular Regulations under which the disciplinary action was taken. It is submitted that the disciplinary action was instituted under the 1993 Regulations. The 2002 Regulations are regulations amending the 1993 Regulations. Learned Senior Federal Counsel relies on my judgment in the unreported case of *Annathurai Marimuthu v. Pengerusi Lembaga Tata tertib Polis DiRaja Malaysia, Bukit Aman & 2 Ors* (Permohonan Semakan Kehakiman No. R1-25-326-2008) where in that case counsel for the applicant herein represented the applicant and had raised a similar argument essentially that the disciplinary action was instituted under regulations which were not applicable to the applicant. In my judgment I said as follows:

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The Public Officers (Conduct And Discipline)(Amendment) Regulations 2002, as its name indicates, is an amending law. The purpose of an amending law is to amend existing legislation. Amending laws describe changes in a particular existing principal law. Hence in section 2 of the 2002 Regulations, the 1993 Regulations is referred to the as the "principal Regulations". *Vide* the 2002 Regulations new provisions were introduced and various provisions then existing in the 1993 Regulations were substituted with new provisions. For example, section 8 of the 2002 Regulations substituted the existing Part V of the 1993 Regulations with a new Part V.

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A The Interpretation Acts 1948 and 1967 (Act 388) provides *vide* section 90 as follows:

90. Construction of amending regulations.

B Where regulations amend other regulations, the amending regulations shall, so far as is consistent with the tenor thereof, and unless the contrary intention appears, be construed as one with the amended regulations.

C Hence with effect from 20.6.2002, the date the amendments came into force, the new provisions introduce *vide* the 2002 Regulations (the amending regulations) form part of and is to be construed as one with the 1993 Regulations (the amended regulations). The 1993 Regulations is still in force and remains as the only regulations governing the conduct and discipline of public servants until such time it is repealed. Therefore it is a misconception to treat the 2002 Regulations as substituting the 1993 Regulations. Consequently the submissions that the Disciplinary Board did not apply the correct law and had acted mechanically is without merit. I find that the Disciplinary Board had not erred in instituting disciplinary action against the Applicant under the 1993 Regulations and consequently the charges leveled against him are valid.

E For the same reasons above I find counsel's submissions in the present case that there is confusion on which regulations apply to be devoid of merit.

F *The Letter 19 March 2009 (Exh. KM9) Is Defective Because It Does Not State The Effective Date Of The Punishments Imposed And There Is No Evidence That The Person Who Signed The Letter Is A Member Of The 1st Respondent*

G [9] I am unable to agree with counsel for the applicant that the omission in stating the effective dates of the punishments renders the letter invalid. I agree with the submissions of learned Senior Federal Counsel that unless otherwise stated, the punishment takes effect immediately upon the decision being made which in this case is the date of the meeting of the 1st respondent on 11 March 2009.

H [10] With regard to the submissions that there is no indication that the signatory of the letter exh. KM9, Dato' Raja Azahar bin Raja Abdul Manap is a member of the 1st respondent, by way of I his affidavit (encl. 10) the said Dato' Raja Azahar avers that:

- (a) he is the secretary of the 1st respondent and has access to all the records in the custody and control of the 1st respondent; A
- (b) he is authorized to handle matters relating to show cause letters, representations and notification of disciplinary punishments; B
- (c) he is competent and authorized to affirm the affidavit in reply on behalf of the 1st respondent;
- (d) the show cause letter (exh. KM2) was issued by the secretary to the 1st respondent at the material time. C

[11] In the case of *Goh Ching Huat v. Ketua Polis Negara & Anor* [2008] 1 CLJ 27 it was submitted that only the person authorized to sign the letter notifying the punishment of dismissal should sign the letter and he cannot authorize another person to sign it. In that case the letter was not signed by its author, Dato' Hj Ahmad Ragib b Mohd Salleh (DW2). DW2 testified that the letter was signed by his deputy, one Dato' Mohd Yussuf bin Said because DW2 was on leave. However there was nothing in the letter to indicate that Dato' Mohd Yussuf signed the letter because his name never appeared in the letter. Dato' Mohd Yussuf was also not called to give evidence to confirm that he was the one who signed the said letter. Therefore it could not be ascertained that he was the one who signed it. The court found no evidence that the letter was signed by an officer authorised by the Deputy IGP to convey his decision to dismiss the appellant. The Court of Appeal held that bearing in mind that this letter is a very important letter, it is only appropriate and proper that the letter bears his name and his status. The Court of Appeal held further that if the decision was conveyed to Dato' Mohd Yussuf, it is more appropriate and proper that the letter be issued in the name of Dato' Mohd Yussuf rather than in the name of DW2. D E F G

[12] In the present case the letter KM9 which conveys the decision of the 1st respondent bears the signature of Dato' Raja Azahar who has affirmed an affidavit that he is the Secretary to the 1st respondent. Further the top left hand corner of the letter bears the words "Setiausaha Suruhanjaya Pasukan Polis" indicating that the said letter was issued by the secretary of the 1st H I

A respondent. I find sufficient evidence that the letter exh. KM9 was signed by the secretary of the 1st respondent who was duly authorized by the 1st respondent to convey the decision of the 1st respondent.

B *Whether The Meeting Of The 1st Respondent Was Chaired By The Inspector General Of Police (IGP) Or The Deputy Inspector General Of Police (Deputy IGP)*

C [13] Counsel for the applicant refers to para. 8 of the affidavit in reply of Dato' Raja Azahar wherein Dato' Raja Azahar avers that the chairman of the disciplinary authority appointed at the material time found that there was a *prima facie* case of disciplinary misconduct against the applicant. Counsel refers to P.U.(B) 441/2001 which provides that the chairman of the disciplinary authority is either the IGP or the Deputy IGP and submits that there is no evidence as to who chaired the meeting of the 1st respondent on 11 March 2009 and who were the other two members of the disciplinary authority. It is submitted that there is doubt as to whether the disciplinary authority was validly constituted.

E [14] I am of the view that it is insufficient for counsel for the applicant to raise a bare allegation to create doubt where none exists. The Police Force Commission *vide* P.U.(B) 441/2001 delegated the exercise of all disciplinary matters including the power to impose the punishment of dismissal or reduction in rank in respect of all Senior Police Officers of the rank of Probationary Inspector up to and including Chief Inspector to the IGP or the Deputy IGP as chairman and two other Senior Police Officers of the rank of Deputy Commissioner up to and including Commissioner as members. I am unable to find any basis for counsel for the applicant to raise this issue of whether the IGP or his deputy chaired the meeting on 11 March 2009. There is no suggestion that the averments of Dato' Raja Azahar in his affidavit in reply are untrue. In the absence of any ground in support of the issue whether the disciplinary authority was validly constituted, the contention by counsel for the applicant is without basis or merit.

Failure To Supply Documents Requested By The Applicant

I [15] Counsel for the applicant submits that the applicant has requested to be supplied with the statements recorded from the five suspects detained but the 1st respondent has failed to supply

the said documents. Counsel relies on the authority of *Chai Kok Choi v. Ketua Polis Negara & Ors* [2008] 1 CLJ 113; *Mat Ghaffar Baba v Ketua Polis Negara & Anor* [2008] 1 CLJ 773. It is submitted that failure by the 1st respondent to supply the statements requested has denied the applicant the opportunity to put up an effective representation to exculpate himself. For the respondents in para. 10 of his affidavit Raja Dato' Azahar avers that although the documents were not supplied to the applicant, he was allowed to see the documents to assist him to put up his representations. Raja Dato' Azahar avers that the applicant has put up a lengthy representation of 34 pages in respect of the three charges indicating that the applicant was aware of elements of the three charges against him. In his affidavit the applicant denies that he was allowed to look at the documents requested.

[16] I find from a perusal of the applicant's representations in respect of the 1st charge that his representation on the 1st charge ran to eight pages. The representation was also accompanied by various police reports lodged by the applicant pertaining to the arrests of suspects named in the 1st charge. The applicant requests to be supplied with the statements recorded from witnesses. The respondent says that the applicant was allowed to see the documents but the applicant denies this. I find no ground to reject the respondents' averment. I am of the view that it is for the 1st respondent to consider the applicant's request for the statements recorded. In my considered opinion even though the applicant has made a request to be supplied with the documents there is no obligation or compulsion on the 1st respondent to comply with the request. The opportunity given to the applicant to look at the documents is sufficient to enable the applicant to appraise himself of the matters alleged against him.

[17] The facts of this case are distinguishable from the case of *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619. In that case the first defendant in the letter informed the plaintiff that the commission had decided to dismiss him after considering his explanations 'and other information'. The Court of Appeal held that the words 'and other information' left a reasonable man with the distinct impression that the defendants had considered material information that was never put to the plaintiff. The Court of Appeal held that a fair procedure includes the duty of an arbiter not to take into account matters that have not been first put to the accused with an opportunity for him to rebut them. In the

A present case the letter KM2 merely refers to a report submitted to the 1st respondent. There is no evidence that the 1st respondent has taken into consideration extraneous matters. The three charges were framed based on the report (*Chai Kok Choi v. Ketua Polis Negara & Ors* [2008] 1 CLJ 113). What is essential is that the person against whom the misconduct is alleged is supplied with sufficient material particulars to enable him to meet the allegation. In *Leeson v. General Council of Medical Education and Registration* [1889] 43 Ch D 366 Bowen LJ says:

C With respect to the charge made, the charge of which he has notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all.

D I find that in respect of the 1st charge for which the applicant was imposed with the punishment of dismissal, all the necessary particulars are present to enable the applicant to meet the charge.

E *Denial Of Oral Hearing*

[18] The words ‘being heard’ does not connote oral hearing and that the right to be heard does not entail an obligation to hold an inquiry. In *Ceylon University v. Fernando* [1960] 1 WLR 223 Lord Jenkins, giving the advice of the Privy Council, quoted with approval at p. 232 the following words of Harman J, as he then was, in *Bryne v. Kinematograph Renters Society Ltd* [1958] 2 All ER 579:

G What then are the requirements of natural justice in a case of this kind? First, I think that the accused person should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more.

H [19] In *Raja Abdul Malek Muzaffar Shah Raja Shahrizzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* (*supra*) the Court of Appeal ruled that the “right to be heard does not in all cases include the duty to afford an oral hearing”. What is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed and the officer avails himself of the opportunity (*Najar Singh v. Government of Malaysia & Anor* [1976] 1 LNS 81). In the present case the applicant has availed himself

of the opportunity to be heard which is reflected in his lengthy representations. In *Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333 the Supreme Court said:

... there should not be anymore lingering doubt as to what the phrase “right to be heard” or “opportunity of being heard” mean at common law or in the statute, and it must be accepted that the issue has been settled, as well as can be on the authorities cited above. Therefore, this point is *cadit quaestio*.

[20] The 1993 Regulations are in accord with the principles of natural justice and procedural fairness (*Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525). In the case of *Abdul Aziz Mohd Alias v. Timbalan Ketua Polis Negara, Malaysia & Anor* [2010] 3 CLJ 643 Zulkefli Makinuddin FCJ said:

we are of the view that the General Orders, in detailing the procedure therein, have sufficiently complied with article 135(2) of the Federal Constitution and, in the process, are in accord with the concept of natural justice and procedural fairness.

Therefore in the context of the 1993 Regulations the absence of an oral hearing does not mean a denial of natural justice.

Conclusion

[21] *Certiorari* is to quash a decision which is void or *ultra vires* in the broad sense (*Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor, supra*). The question is whether in its totality the 1st respondent has considered the applicant’s case and arrived at a decision in accordance with the procedure laid down by the 1993 Regulations. Having considered the evidence and the submissions I find that there has been no failure by the 1st respondent to observe the rules of natural justice or to properly direct itself to appreciate the 1993 Regulations or any *Wednesbury* unreasonableness to merit interference. For the aforementioned reasons the application to quash the decision of the 1st respondent dismissing the applicant from service is dismissed. Costs of RM2,500 to the 3rd respondent.

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